

**STATE OF INDIANA
DEPARTMENT OF STATE REVENUE**

IN REGARDS TO THE MATTER OF:

**MR. MIKE ABBOTT
DOCKET NO. 29-20010360**

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DEPARTMENTAL ORDER**

An administrative hearing was held on Wednesday, February 6, 2002 in the office of the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204 before Bruce R. Kolb, an Administrative Law Judge acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

The Petitioner, Mr. Mike Abbott, appeared *Pro Se*. Attorney Steve Carpenter, appeared on behalf of the Indiana Department of State Revenue.

A hearing was conducted pursuant to IC 4-32-8-1, evidence was submitted, and testimony given. The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Departmental Order.

REASON FOR HEARING

On December 18, 2001 the Indiana Department of Revenue notified the Petitioner that he was prohibited from having any connection with Charity Gaming as described in IC 4-32-1-1 for a period of five (5) years and fined him one thousand dollars (\$1,000). The Petitioner protested in a timely manner. A hearing was conducted in accordance with IC § 4-32-8-1.

SUMMARY OF FACTS

- 1) The Petitioner is purported to have received remuneration while acting as an Operator in violation of IC 4-32-9-25.
- 2) Petitioner allegedly acted as an Operator for two qualified organizations at the same time in violation of IC 4-32-9-26.
- 3) Petitioner is alleged to have sold gaming supplies without a license as provided by IC 4-32-7-4.
- 4) Pursuant to IC 4-32-12-2 the Petitioner was assessed a civil penalty and was fined One Thousand Dollars (\$1,000) for violating IC 4-32-7-4.
- 5) On December 18, 2001 the Indiana Department of Revenue prohibited Petitioner from having any connection with Charity Gaming for a period of five (5) years pursuant to IC 4-32-12-3.

FINDINGS OF FACTS

- 1) The Petitioner was listed as an Operator on the Loyal Order of Moose Lodge No. 629 (Osgood) form CG-13 (Annual Bingo License) for the period May 1, 2000 to April 30, 2001 (Department's Exhibit A).
- 2) The Petitioner was listed as an Operator on the C.B. Helping Hand Club, Inc. (C.B.) form CG-13 (Annual Bingo License) for the period October 1, 1999 to September 30, 2000 (Department's Exhibit B).
- 3) The Petitioner was also listed as an Operator on the C.B. form CG-2R (Annual Bingo Renewal Application) dated September 30, 1999.
- 4) Petitioner was listed as an Operator for Osgood and C.B. during the same time.
- 5) Petitioner testified on his own behalf.
- 6) The Department produced photocopies of ten (10) checks written to the Petitioner and signed by himself and one other person (see Department Exhibit C).
- 7) The ten (10) photocopied checks in Department's Exhibit C were dated in the months of February and March of 1999.
- 8) According to the Department's own records, the Petitioner was an Operator for Osgood for the period of May 1, 2000 to April 30, 2001 (see Department Exhibit A).
- 9) The Department produced no records showing payments made to Petitioner during the time he was an Operator for Osgood.
- 10) The Department's investigator stated that she had interviewed employees of Hamilton Merchandising LLC and they confirmed selling gaming supplies to Petitioner.
- 11) The Department's investigator also testified that Petitioner sold gaming supplies to Osgood as evidenced by the photocopied checks of payment to Petitioner (see Department's Exhibit C).
- 12) Petitioner testified under oath that he was employed by an individual by the name of Paul Schwartz and used his license to purchase gaming supplies.
- 13) Petitioner stated that he did not know that Mr. Schwartz was not licensed by the State of Indiana as a distributor.
- 14) Petitioner contends that he used a copy of the license given to him by Mr. Schwartz in order to purchase and sell gaming supplies.
- 15) Petitioner argued that he complied with all the Department's requests for documents and cooperated fully in the investigation.
- 16) Petitioner states that he ceased selling gaming supplies when he was notified, by the Department's investigator, that his sales were violating Indiana law.
- 17) Petitioner testified that he received 10% of the proceeds from each sale he made for Mr. Schwartz.

STATEMENT OF LAW

- 1) Pursuant to IC 6-8.1-5-1, the Department's findings are prima facie evidence that the Department's claim is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).
- 2) IC 4-32-9-25 provides, "Except as provided in subsection (b), an operator or a worker may not receive remuneration for:
 - (1) preparing for;
 - (2) conducting;
 - (3) assisting in conducting;

- (4) cleaning up after; or
- (5) taking any other action in connection with; an allowable event.
- (b) A qualified organization that conducts an allowable event may:
 - (1) provide meals for the operators and workers during the allowable event; and
 - (2) provide recognition dinners and social events for the operators and workers; if the value of the meals and social events does not constitute a significant inducement to participate in the conduct of the allowable event.
- 3) IC 4-32-9-26 states, “An individual may not be an operator for more than one (1) qualified organization during a calendar month. If an individual has previously served as an operator for another qualified organization, the department may require additional information concerning the proposed operator to satisfy the department that the individual is a bona fide member of the qualified organization.”
- 4) IC 4-32-7-4 provides, “The department has the sole authority to license entities under this article to sell, distribute, or manufacture the following:
 - (1) Bingo cards.
 - (2) Bingo boards.
 - (3) Bingo sheets.
 - (4) Bingo pads.
 - (5) Any other supplies, devices, or equipment designed to be used in playing bingo designated by rule of the department.
 - (6) Pull tabs.
 - (7) Punchboards.
 - (8) Tip boards.
 - (b) Qualified organizations must obtain the materials described in subsection (a) only from an entity licensed by the department.
 - (c) The department may not limit the number of qualified entities licensed under subsection (a).
- 5) Pursuant to IC 4-32-12-2 the department may impose upon a qualified organization or an individual the following civil penalties:
 - (1) Not more than one thousand dollars (\$1,000) for the first violation.
 - (2) Not more than two thousand five hundred dollars (\$2,500) for the second violation.
 - (3) Not more than five thousand dollars (\$5,000) for each additional violation.
- 6) According to IC 4-32-12-3, “In addition to the penalties described in section 2 of this chapter, the department may do all or any of the following:
 - (1) Suspend or revoke the license.
 - (2) Lengthen a period of suspension of the license.
 - (3) Prohibit an operator or an individual who has been found to be in violation of this article from associating with charity gaming conducted by a qualified organization.
 - (4) Impose an additional civil penalty of not more than one hundred dollars (\$100) for each day the civil penalty goes unpaid.

CONCLUSIONS OF LAW

- 1) The Petitioner was an Operator for both Osgood and C.B. at the same time in violation of IC 4-32-9-26.
- 2) Petitioner purchased gaming supplies for resale to qualified organizations without a license in violation of IC 4-32-7-4.
- 3) Qualified organizations must obtain the materials described in IC 4-32-7-4 only from an entity licensed by the department.

DEPARTMENTAL ORDER

Following due consideration of the entire record, the Administrative Law Judge holds the following:

The One Thousand Dollars (\$1,000) civil penalty for violating the provisions of IC 4-32-7-4 is hereby upheld. Petitioner was an Operator for both Osgood and C.B. at the same time in violation of IC 4-32-9-26. Pursuant to IC 4-32-12-3, Petitioner is hereby prohibited from having any connection with Charity Gaming for a period of two (2) years.

- 1) Under IC 6-8.1-5-1, the organization may request a rehearing. However, rehearings are granted only under unusual circumstances. Such circumstances are typically the existence of facts not previously known that would have caused a different result if submitted prior to issuance of the Departmental Order.
- 2) A request for rehearing shall be made within seventy-two (72) hours from the issue date of the Departmental Order and should be sent to the Indiana Department of Revenue, Legal Division, Appeals Protest Review Board, P.O. Box 1104, Indianapolis, Indiana 46206-1104.
- 3) Upon receipt of the request for rehearing, the Department will review the respective file and the rehearing request to determine if sufficient new information has been presented to warrant a rehearing.
- 4) The Department will then notify the organization in writing whether or not a rehearing has been granted. In the event a rehearing is granted, the organization will be contacted to set a rehearing date.
- 5) If the request for rehearing is denied or a request is not made, all administrative remedies will have been exhausted. The organization may then appeal the decision of the Department to the Court of proper jurisdiction.

THIS DEPARTMENTAL ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN SEVENTY-TWO (72) HOURS FROM THE DATE THE ORDER IS ISSUED.

Dated: _____

Bruce R. Kolb / Administrative Law Judge